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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CITIBANK, N.A., as Trustee, etc.,

Plaintiff and Respondent,

v.

EDMUND GUTIERREZ CASTILLO,

Defendant and Appellant.

B283387

(Los Angeles County
Super. Ct. No. BC546043)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Mark V. Mooney, Judge. Affirmed.

Edmund Gutierrez Castillo, in pro. per., for Defendant and
Appellant.

Wright, Finlay & Zak, Jonathan D. Fink and Ruby J.
Chavez for Plaintiff and Respondent Wilmington Trust, N.A.,
Successor Trustee to Citibank, N.A.

INTRODUCTION

Wilmington Trust, N.A. brought this action against Edmund Gutierrez Castillo to cancel documents he allegedly forged and recorded purporting to release Wilmington's interest in property that secured a promissory note Castillo had signed. Castillo appeals from the judgment entered after the trial court granted Wilmington's motion for summary judgment. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

A. *The Deed of Trust Securing Castillo's Promissory Note Is Reconveyed*

Castillo obtained a \$220,000 loan from Platinum Capital Group evidenced by a promissory note and secured by a deed of trust against real property in Torrance, California. The deed of trust stated that the beneficiary, as nominee for the lender, was Mortgage Electronic Registration Systems, Inc. (MERS) and that MERS could assign its interest to another party and appoint a successor trustee. At some point, the note and deed of trust were transferred to the certificate holders of Structured Asset Mortgage Investments II, Inc., Bear Stearns ALT-A Trust, Mortgage Pass-Through Certificates, Series 2006-4 (the Bear Stearns Trust), a securitized investment trust. The loan and deed of trust were later assigned, pursuant to the Pooling and Servicing Agreement governing the Bear Stearns Trust, to Citibank, N.A., as trustee of the Bear Stearns Trust.

Castillo defaulted on the note. In August 2012 Quality Loan Service Corporation, acting as the agent for the beneficiary, recorded a notice of default. One month later, Castillo (or

someone using his name) recorded a grant deed purporting to convey the Torrance property to himself and to unilaterally revoke the deed of trust.¹ Neither Citibank nor Wilmington, which would succeed Citibank as trustee, authorized the transfer.

Castillo never cured his default. In November 2012 Quality Loan Service Corporation recorded a notice of trustee's sale. In December 2012 Citibank resigned as trustee of the Bear Stearns Trust and, as authorized by the Pooling and Servicing Agreement, Wilmington was appointed as successor trustee.

On September 16, 2013 Castillo (or someone using his name) recorded a document that purported to substitute a new trustee under the deed of trust and to reconvey Citibank's interest in the deed of trust. Castillo (or someone using his name) signed the document "in the capacity of Settlor for Citibank, N.A. as Trustee for [the Bear Stearns Trust]." Neither Wilmington nor Citibank authorized or executed this document. In December 2013 Quality Loan Service Corporation recorded a second notice of trustee's sale.

¹ The "Deed of Recovation" stated: "Given the name Edmund Gutierrez Castillo by the Father, I am an immortal living soul created in his image here as one of his people, a living man, under the seal Edmund Gutierrez Castillo am the lawful owner of the landed estate EDMOND GUTIERREZ CASTILLO and it's [*sic*] real property and interest. [¶] I accept the oaths of all lawful officers and bind them to it, and in return extend my sovereign immunity to carry out this lawful order." The document further provided: "Under the lawful powers of the Trustor of the Deeds of Trusts, I revoke said Deed of Trusts due to lack of execution and or delivery acknowledgment by the Lender/Beneficiary."

B. *Citibank Sues Castillo for Fraud*

In May 2014 Citibank sued Castillo for cancellation of instruments (the “fraudulent” grant deed and reconveyance) and for declaratory relief.² Citibank alleged that, if not canceled, the unauthorized grant deed and reconveyance would be a cloud on the title and impair the value of Citibank’s secured interest. Citibank also sought a “quiet title judgment” that the deed of trust securing the promissory note was “a valid and enforceable first lien against the Subject Property” and that Castillo did not have “any right, title, estate, lien or interest in the Subject Property adverse to” Citibank’s lien interest.

Citibank filed a motion for summary judgment or in the alternative for summary adjudication. While the motion was pending, counsel for Citibank discovered that Wilmington, not Citibank, was the trustee of the Bear Stearns Trust, and counsel filed a motion to substitute Wilmington as the proper plaintiff. The trial court granted the motion to substitute Wilmington for Citibank as the plaintiff and placed off calendar as moot Citibank’s motion for summary judgment, without prejudice to Wilmington’s right to refile it.³

In May 2016 Wilmington filed a motion for summary judgment, supported by evidence describing the history of the transfers of the note and deed of trust. Castillo opposed the motion, and the trial court granted it. The court entered a judgment quieting title in the deed of trust to the Torrance

² Citibank dismissed without prejudice a cause of action for slander of title.

³ We augment the record to include the court’s December 3, 2015 minute order.

property in favor of Wilmington as trustee of the Bear Stearns Trust, as “a valid and enforceable first priority lien against” the property, and canceled the fraudulent grant deed and reconveyance. Castillo filed a timely notice of appeal from the judgment.

DISCUSSION

A. *Standard of Review*

Summary judgment is appropriate “where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law.” (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618.) We review a trial court’s order granting summary judgment de novo (*Samara v. Matar* (2018) 5 Cal.5th 322, 338; *Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347), and ““the appellant has the burden of showing error, even if he did not bear the burden in the trial court.”” (*Dinslage v. City and County of San Francisco* (2016) 5 Cal.App.5th 368, 379; see *Centex Homes v. St. Paul Fire & Marine Ins. Co.* (2018) 19 Cal.App.5th 789, 796 [“the [appellants] bear the burden of establishing error on appeal, even though [the respondent] had the burden of proving its right to summary judgment before the trial court”].)

B. *The Trial Court Did Not Err in Considering Wilmington’s Motion for Summary Judgment*

Code of Civil Procedure section 437c, subdivision (f)(2), provides: “A party shall not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court unless that party establishes, to the

satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.”⁴ Castillo argues the trial court erred in considering a second motion for summary judgment by Wilmington.

But Wilmington only filed one motion for summary judgment; Citibank filed the other one. And section 437c, subdivision (f)(2), applies only when the second motion for summary judgment is based on “issues asserted” in the first motion. The trial court did not rule on the issues asserted in Citibank’s motion for summary judgment; the court ruled the motion was moot because Wilmington had replaced Citibank as the plaintiff and was no longer a party.

In any event, even if section 437c, subdivision (f)(2), applied in this situation, the trial court has authority to consider a renewed motion for summary judgment. (See *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1105 [“[s]ection 437c, subdivision (f)(2) . . . merely says that ‘a party may not’ make a motion that violates its provisions”; “[i]t says nothing limiting the court’s ability to act”]; *Marshall v. County of San Diego* (2015) 238 Cal.App.4th 1095, 1104 [“trial court had inherent authority to entertain successive motions for summary judgment and/or adjudication,” italics omitted]; see also *Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 616 [“the trial court ‘elected to exercise its inherent authority to reconsider its original denial of the [defendant’s summary judgment] motion’”].) And the trial court’s ruling that Citibank’s motion for summary judgment motion was moot and the court’s action in taking the motion off

⁴ Undesignated statutory references are to the Code of Civil Procedure.

calendar were without prejudice to Wilmington filing a motion for summary judgment. (See *R & A Vending Services, Inc. v. City of Los Angeles* (1985) 172 Cal.App.3d 1188, 1193 [““Off Calendar” . . . merely means a postponement,” and a court may postpone a “hearing to a later date or . . . drop or strike a case from the calendar, to be restored on motion of one or more of the litigants or on the court’s own motion”].) The trial court did not err in ruling on a motion for summary judgment by a party that had not filed the prior motion and that the court indicated the party could file.

Castillo also argues that, by failing to rule on Citibank’s motion for summary judgment, the trial court violated its obligation under Government Code section 68210 to decide matters within 90 days of submission and its duty under California Rules of Court, rule 10.608 to hear matters assigned to the court. But the trial court did rule on Citibank’s motion, albeit not on the merits: The court ruled the motion was moot, and for that reason took it off calendar.

C. *Counsel for Wilmington Had Authority To File the Motion for Summary Judgment*

Castillo argues Wilmington never signed a retainer agreement with its attorneys. Assuming Castillo has standing to raise this issue, it lacks merit. “An attorney’s authority to represent his purported client is presumed in the absence of a strong factual showing to the contrary.” (*Sarracino v. Superior Court* (1974) 13 Cal.3d 1, 13; see *Sullivan v. Dunne* (1926) 198 Cal. 183, 190 [“[t]he fact that an attorney appears on behalf of a party raises a [disputable] presumption of ‘authority upon his part to do so’”]; *People v. Fedalizo* (2016) 246 Cal.App.4th 98, 106-

107 [same].) There was no factual showing, let alone a strong one, that Wilmington's attorneys of record did not have authority to represent Wilmington in this action and file a motion for summary judgment on its behalf.

D. *Wilmington Did Not Have To File an Amended Complaint To Move for Summary Judgment*

Castillo asserts that Wilmington's failure to file "an amended complaint to plead . . . facts relevant to Wilmington" or a motion for leave to amend the complaint precluded Wilmington from moving for summary judgment. The law, however, did not require Wilmington to file an amended complaint with allegations specific to Wilmington as opposed to Citibank. "[C]ourts have permitted plaintiffs who have been determined to lack standing, or who have lost standing after the complaint was filed, to substitute as plaintiffs the true real parties in interest. [Citations.] Amendments for this purpose are liberally allowed." (*Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 243; see *Demetriades v. Yelp, Inc.* (2014) 228 Cal.App.4th 294, 305-306 ["[u]nder certain circumstances, a complaint may be amended to substitute a new plaintiff where it is determined the named plaintiff is not the proper party to maintain the alleged claims"].) An important limitation to this rule is "that the plaintiff proposed to be substituted may not 'state facts which give rise to a wholly distinct and different legal obligation against the defendant.'" (*Branick*, at p. 243; see *Demetriades*, at pp. 305-306 [the amendment to substitute a new plaintiff may not "present an entirely new set of facts" or prejudice the defendant].)

Citibank, which did not have standing when it filed the complaint, substituted Wilmington, which did, as the proper

plaintiff. As amended to name Wilmington as plaintiff, the complaint alleged the same facts and made the same claims. The substitution did not prejudice Castillo, and the court did not have to require Wilmington to file an amended complaint.

E. *Wilmington Submitted Admissible Evidence in Support of Its Motion for Summary Judgment*

Castillo argues the declaration on which Wilmington relied in support of its motion for summary judgment did not affirmatively show the declarant was competent to testify to the matters stated in the declaration. Section 437c, subdivision (d), states: “Supporting and opposing affidavits or declarations shall be made by a person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations. An objection based on the failure to comply with the requirements of this subdivision, if not made at the hearing, shall be deemed waived.” (See *Gatton v. A.P. Green Services, Inc.* (1998) 64 Cal.App.4th 688, 696 [“[i]t has long been held that for an affidavit to meet summary judgment standards, the affiant must show that if sworn as a witness he or she can testify competently to the evidentiary facts contained in the affidavit”]; *Regents of University of California v. Superior Court* (1996) 41 Cal.App.4th 1040, 1044 [“[s]upporting and opposing affidavits or declarations must be made on personal knowledge and must set forth admissible evidence; they must affirmatively demonstrate that the affiant is competent to testify to the matters asserted in them”].)

There is no indication in the record, however, Castillo ever objected to the declaration, thus forfeiting the argument. (See

Rodriguez v. E.M.E., Inc. (2016) 246 Cal.App.4th 1027, 1045 [“[u]nder the summary judgment statute, objections to declarations are generally forfeited when not asserted before the trial court”]; *Collin v. CalPortland Co.* (2014) 228 Cal.App.4th 582, 599, fn. 5 [defendants forfeited evidentiary objections because they did not raise them “in their summary judgment papers or at the hearing before the trial court”].) Moreover, had Castillo preserved the argument, the declarant in support of Wilmington’s motion, Mark Syphus, stated facts demonstrating he was competent to testify to the matters in his declaration. Syphus stated that he was a document control officer with Select Portfolio Services, Inc., the servicing agent and attorney-in-fact for Wilmington, and that he regularly maintained a computer database of transactions involving the loans Select serviced. Syphus reviewed the records in the database, compiled loan records as exhibits in support of Wilmington’s motion for summary judgment, and explained what the loan records reflected.

F. *The Trial Court Properly Granted Wilmington’s Motion for Summary Judgment*

Castillo argues Wilmington “deceived the court, by stating [it was] a beneficiary or trustee for [his] [m]ortgage” and misrepresented it “had title.” Castillo contends there were triable issues of material fact regarding “how Wilmington Trust became the new Trustee,” whether substitution of trustee was permissible, “whether the Securitized Trust exists,” and “how the securitization took place.”

Castillo, however, does not cite any evidence in the record he contends created a triable issue of material fact on these (or

any other) issues. (See *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115 [an appellant who does not cite the evidence in the record he or she contends created a triable issue of material fact forfeits the argument the trial court erred in granting summary judgment]; see also *Spangle v. Farmers Ins. Exchange* (2008) 166 Cal.App.4th 560, 564, fn. 3 [the problem of not providing citations to the record “is especially acute when, as here, the appeal is taken from a summary judgment”].) In any event, there were no triable issues of material fact. Wilmington presented evidence showing how Castillo borrowed money from Platinum Capital Group and secured his debt with a deed of trust and how, including through the securitization of the note and deed of trust, Citibank and then Wilmington became trustee. The trial court properly granted Wilmington’s motion for summary judgment.

G. *The Trial Court’s Order Granting Summary
Judgment Complied with the Law*

Castillo contends the trial court erred by not issuing a statement of decision. A trial court, however, does not have to issue a statement of decision in ruling on a motion for summary judgment. (See *McMillin Companies, LLC v. American Safety Indemnity Co.* (2015) 233 Cal.App.4th 518, 532, fn. 21 [“[i]n civil cases, statements of decision generally are not required after a ruling on a motion”]; *Dameshghi v. Texaco Refining & Marketing, Inc.* (1992) 3 Cal.App.4th 1262, 1284 [“the summary judgment statute[] does not require the court to issue a statement of decision when granting a motion”], disapproved on another ground in *Trope v. Katz* (1995) 11 Cal.4th 274, 292.)

Castillo also contends the trial court failed to comply with section 437c, subdivision (g), which requires the court to “specify the reasons” for granting a motion for summary judgment and to “specifically refer in the order to the evidence proffered in support of and, if applicable, in opposition to, the motion that indicates no triable issue exists.” The trial court, however, complied with these requirements. The court’s order stated in detail the court’s reasons for granting Wilmington’s motion for summary judgment and referred to the supporting evidence cited in Wilmington’s separate statement of undisputed facts. (See *W. F. Hayward Co. v. Transamerica Ins. Co.* (1993) 16 Cal.App.4th 1101, 1110-1111 [the trial court’s minute order and judgment left “no question about the reason th[e] motion for summary judgment was granted” and allowed for “meaningful appellate review”].)

DISPOSITION

The judgment is affirmed. Wilmington Trust is to recover its costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

STONE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.